IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 227 OF 2004

Vasant Suka Kasabe & Anr. ... Appellants

Vs.

Eknath Mahadu Kasabe
(since deceased through his legal
heirs)
1A. Sitabai Eknath Kasabe & Ors. Respondents

Mr. G.D.Utangale, Advocate i/b. Utangale & Co.,Advocates for the Appellants.
Mr. Shriram S. Kulkarni, Advocate for Respondents 1B, 1C & 1E.

CORAM: J.H.BHATIA,J.

DATE : 18th September, 2007.

P.C.

1. Heard learned Counsel for the parties.

2. Mr. Utangale, learned Counsel for the appellants, who are the original defendants Nos. 3 and 4, makes a statement that he has no objection to maintain the decree passed by the trial Court as far as

the partition and separate possession is concerned and also as far as the share of the plaintiff and respondent No.1 is declared. He contends that para 3 of the operative order in the judgment passed by the trial Court, which reads as follows, needs to be modified :-

> "3. It is hereby declared that the transaction of sale of 2 Hectares land out of suit land Gat NO.175/1 by defendant No.3 Vasant in favour of defendant No.4 Ranganath is void."

According to the learned Counsel, the purpose will be served if the two hectares of land in Gat No.175/1 sold by defendant No.3, who is son of defendant No.1, to defendant No.4 is allotted to the share of the defendant No.1 in partition as far as possible. Admittedly, during the pendency of the suit, the defendant No.3, who is the son of defendant No.1, has sold the said land to defendant No.4 and it has to be subject to the decision of the suit.

3. In view of the above circumstances, I find that para 3 of the operative order in the judgment of the trial Court needs to be modified and with consent of the Counsel for both the parties, it stands modified as follows :-

(i) The sale of two hectares land out of Gat No.175/1 by defendant No.3 in favour of defendant No.4 pending the suit shall not be binding on the plaintiff and defendant No.2.

(ii) The said two hectares land out of suit land Gat No.175/1, which is sold by defendant No.3 in favour of defendant No.4 pending the suit shall be, as far as possible, allotted to the share of defendant No.1 in the partition of the suit and if the said land is allotted to the share of the defendant No.1, the defendant No.4 may retain possession o the same. However, in case in the partition, it is not possible to allot whole of the two hectares land in Gat No.175/1 to defendant No.1, as much portion of it as possible may be allotted to defendant No.1 to meet the ends of justice, subject to the provisions of the Prevention of Fragmentation & Consolidation of Holdings Act.

Appeal stands disposed of accordingly.

4. In view of the order in Appeal, the Civil Application NO.162 of 2004 stands disposed of.

(J.H.BHATIA,J.)